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THE  
CORDIALL  
OF  
udge Jenkyns  
For the good People  
of L O N D O N .

*In reply to a thing, called  
An Answer to the poy-  
sonous seditious Paper of  
Mr. DAVID JENKINS;  
by H. P. Barrister of  
Lincolns-Inne.*



Printed in the Yeare, 1648.

ORDINAL  
OF  
Ss. MARY & JESUS  
FOR THE GOOD PEOPLE  
OF LONDON

WILLIAM BUNN  
A WITNESS TO THE BODY  
OF THE HOLY TRINITY  
WILLIAM BUNN  
BY H. P. BUNN  
PRINTED IN LONDON  
BY H. P. BUNN  
1616

THE CORDIALL OF JUDGE  
JENKINS, FOR THE  
GOOD PEOPLE OF  
LONDON.

After the said Mr. H. P. hath  
made a recital of the heads of  
my Indication, he deduced his An-  
swers unto these eight particulars,  
which follow verbatim, as I have  
done to him, with relation unto them  
as to his evidence. I truly verily tell  
It cannot be denied, but the Parliament  
sits by the Kings Writ, nay if Sta-  
tute Law be greater than the Kings  
Writ, it cannot be denied but the Par-  
lia. sits, or ought to sit by something  
greater than the Kings writ: & if it be  
confessed that the Parlia. sits by the Kings  
writ, but do not act by the Kings writ,  
then it must follow that the Parlia. is  
a voyd vaine Court, and sits to no pur-  
pose; nay it must also follow, that the  
Parlia. is of lesse authority, and of lesse use  
than any other inferior Court, for as  
much as it is not in the Kings power to

controle other Courts, or prevent  
them from fitting or acting.

This is a gross consequence, the King's power is in himself. Ergo, it is not derived to, nor does it reside virtually in Parliament. For the light of the remains imbodyed, & unexhausted the Glob of the Sun, at the same time as it is diffused and displayed through all the body of the aire & air; who not that the King, without emptying himself, gives Comissions daily Oyer and Terminer to others, which himself can neither frustrate nor elude but for my part I conceive it is a gross to infer that the Parliament has only the King's power, because in the King's power residing for it seems to me, that the Parliament does both and act by concurrent power, devolving both from the King and Kingdom; and in this sonde things are more obvious and apparent than in others. By what power does the Parliament grant Subsidies to the King? if not by the power which the King gives, then the King may take Subsidies without any grant from the Parliament; but if he do by a power which the King gives to the Parliament, then it will

ow, the Parliament hath a power gi-  
en both by King and Kingdom.

## 3.

The sending Propositions to the King and desiring his concurrence, is scarce worth an Answer: for Subjects may humbly petition for that which is their strict right and property. Nay it may sometimes be seem a Superiour to prefer suit to an inferiour for matters in themselves due. God himself hath not utterly disdained to beseech his own miserable, impious, unworthy creatures: besides, 'tis not our Tenet, that the King hath no power, because he hath not all power, nor that the King cannot at all promote our happiness, because he hath no just claime to procure our ruine.

## 4.

We affirm not that the Kings power is separated from his person, so as the two *Spencers* affirmed, neither do we from conclusions out of that separation as the two *Spencers* did, either that the King may be removed for misdemeanours, or performed *per asperita*: or that the Subject is bound to govern in ayd of him: we only say, that his power is distinguishable from his person.

person, and when he himselfe make distinction betwixt them, commanding *ene thing* by his legall Writ Courts and Officers, and commanding *another thing* extrajudicially word of mouth, Letters, or Minister we are to obey his Power rather than his Person.

## 5.

We take not from the King all power of pardoning Delinquents, we only say it is not proper to him *qua modo*: For if the King pardon him which hath murthered my Son, his pardon shall not cut me off from my appeal; and 'tis more unreasonaable, that the *Kings* pardon should make a whole State which hath suffered remediless than any private man. So if the King should deny indemnity to those which in the furie of warre have done things unjustifiable by the Lawes of peace and thereby keep the wounds of the State from being bound up, 'tis equitable that an Act of Indemnity should be made forcible another way. And his will not hold, yet this is no good consequence, the *King* is absolute in point of pardons, therefore he is absolute in all things else; and the Parliament hath no power to discharge Delinquencies

in other matters.

The Parliament hath declared the King to be in no condition to govern; but this must not be interpreted rigidly, and without distinction; for if the King with his Sword drawn in his hand, and pursuing the Parliament and their Adherents as Rebels, bee not fit for all Acts of Government, let it be hereby iustimulated that he be divested of the habit or right of Governing: if he be unqualified now, he will not be unqualified for the future; if he may not doe things destructive to the Parliament, he is not barred from returning to the Parliament, or doing Justice to the Parliament. This is a violent and subterfuge.

We swear, that the King is our supreme Gouverour over all persons, and in all causes; but we do not swear that he is above all Law, nor above the partie of his people, which is the end of the Law, and indeed Paramount to the Law it selfe. If he be above Law, or liable to no restraint of our Law, then wee are no freer than the French.

French or the Turkes, and if he be  
bove the prime end of Law, *commi*  
*safety*, then we are not free as t  
French or Turkes. For if the tot  
subversion of the French or Turke we  
attempted, they might by Gods La  
imprinted in the book of Nature, ju  
tie a selfe defence; but we must ren  
dilesly perish, when the King s. Plea  
to commandour throats. Besides, h  
atchieved the King of Egland sic  
Supremacy above all Law, and  
community it selfe, for whole beho  
Law was made? If Gods donation  
pleaded, which is not speciall  
him, or different from what o  
Kings may pretend to, then to w  
purpose serves our Lawes, nay,  
what purpose serves the Lawes of  
ther Countries? for by this genet  
donation, all Nations are condemn  
to all servitude as well as we. If  
Law of this Land be appealed  
what Bookes hath Mr. Jenkins re  
where hath he found out that *Lex R*  
*gia*, whereby the people of Eng  
have given away from themselves  
right in themselfes? Some of  
Bookes tell us, that we are more  
than the French; that the King  
not oppresse us in our Persons or  
states; by imprisonment, denyi  
just

ustice : or laying Taxes without our  
consents. Other Bookes tell us, that  
the safety of the people is the supremam  
Law, and that the King hath both  
God and the Law for his Superiour.  
But all this is nothing to learned Mr.  
Jenkins,

8.

We admit, that no Acts of Parlia-  
ment are compleat, or formally bind-  
ing, without the Kings assent : yet  
this is still to be denied, that there-  
fore without this assent particularly  
express, the two Houses can doe no-  
thing, nor have any virtuall power at  
all, no, not to examine Mr. Jenkins,  
nor to doe any other thing of like na-  
ture, though in order to publicke  
justice and safety. I have done, and  
wish M. Jenkins would call in and lick  
up againe his black infamous execrable  
reproaches, so filthily vomited out  
against the Parliament.

To the first.

I was examined by a Committee  
appointed by the House of Com-  
mons : I say, and said that the  
House of Commons have no power  
to examine me, for that it is no  
Court ; every Court hath power to  
exa-

examine upon Oath ; this power the House of Commons never claimed. *The Court of Pye powders, court-Baron, Hundred court, County court*

*3 H. 4 c. 3* and every other Court of Record, or *3 H. 6. 45* not of Record hath power to examine upon Oath, and an examination without Oath is a communication only : examination in Law is upon Oath.

*Sir Anthony Maynes  
c. a. e.*

*Cook 1 par.  
Reports.*

*Lit. 2. lib.*

*Se<sup>q</sup>. 194. 6*

*H. 4. 1*

There is no court without a power of tryall ; the House of Commons have no power to try any offence, nor ever practised it by Bill, Indictment, Information, Plaintiff, or Original Writ, to reduce it to tryall, nor to try it by Verdict, Demurrer or Examination of Witnesses upon oath, without which there can be no condemnation or judgement : and that which can attain to no reasonable end, the Law rejects as a thing *inutile* and *uselesse*. *Sapiens incipita fin.*

The writ whereby they are called gives them power, *Ad faciendum & consenserendum* : To what ? To such things *Quae ibidem de communi consilio ordinari contingerint* (viz.) in the Parliament, This makes nothing at all for a Court for the House of Commons : that *consilium* which that Writ intends, is cleared partly by the Writ for

*6 pars instic  
sol 4. & 9.*

chusing Knights, &c. For the King that Writ is laid to resolve to contract and treat with the Prelates and others of the Kingdome, for and touching the great concernements of the Common-wealth (for the King never sits in the House of Commons: ) and this also is made evident by the Writs to the Prelates, Peers, Judges, and to his Counsell at Law: The Writs in the Writ are, *To appear and present: Parliament, Consilium imperii* the one doth *consulere*, the other *consentire*.

The House of Lords, where the King sits in persons, assisted by His Lords, Judges, Serjeants, Attorney, Solicitor, Masters of the Chancery, a court of Record to many purposes, doth have in the Bookes of Law, and the Statutes of the Land, and that court only in the House of Lords, where the King sits.

A court must either be by the Kings Patent, Statute Law, or by the Common Law, which is common and constant usage: the House of Commons hath no Patent to bee a court, or Statute Law to bee a court, nor common usage: they have no Journal Booke, but since Edward, 6. time, as there ever fine by the House of Commons.

7 H. 6. 18  
1 H. 7 30  
13 Ed. 3. c. 5  
4 pars int.  
p. 21.

Plowd  
Com. 319.

Commons estreated into the Exchequer? For murder or Felony they can imprison no man, much lesse for Treason; that House which cannot doe the lesse, cannot doe the greater.

25 E.3. c. 4.  
3 Car. Peti-  
tion of  
Right.

It is ordained, that no man shall be imprisoned, or put out of his Franchise by the King or his Counce but upon indictment, or presentment of his good and lawfull Neighbour where the deed is done, or by originall Writ at the Common Law, and so is *Lex terræ* the Law of the Land mentioned in *Magna Charta*, cap. 2 expounded, and the said *Magna Charta*, and *Charta de Foresta*, are declared by the Statute of 25 E. I. c. 1. to be the Common Law of the Land. And Judges and Commissioners are to proceed *Secundum legem, & consuetudinem Regni Angliae*, as appeares by proceedings in all Courts, and by Commissions: and therefore the House of Commons by themselves proceeding not by Indictment, Presentment or Originall Writ, have no power imprison men, or put them out of Franchise.

4 Pars in pte.  
2. 1.  
3 Pars in pte.  
p. 23.

This no way trenches upon the Parliament; for it is in Law Parliament without King and both Houses; I have onely in my Paper

lyvered to Mr. Corbet, applyed my selfe to that Committee, that had not power to examine me, but I never bought, said, or wrote, that the Parliament had no power to examine me. The Law and custome of this Land is that a Parliament hath power over my life, liberty, lands and goods, and over every other Subject, but the House of Commons of it selfe hath no such power.

For the Lord Cookes relation, that the House of Commons have imposed fines, and imprisoned men in Queene Elizabeths time, and since; Few facts I late time never questioned, make no power nor Court; *a facto ad ius* is no good argument; for the words of the Statute of 6 Hen. 8. cap. 16 that a licence to depart from the House of Commons for any Member thereof, is to be entred of Record into the Booke of the Clearke of the Parliament, appointed, or to be appointed or that House, doth not conclude that the House of Commons is a Court of Records.

For first, that Law of 6 Hen. 8. cap. 26. handles no such question, as that, whether the House of Commons be a Court; it is a maxime in all Lawes, *Lex a ludo trahens nil probat*, the word

(Rec.

12 H. 7. 20  
Princes case  
8 Pars  
Cook.

1 Pars insti.  
P. 159

14 H. 8. 3  
Dicey 38.

H. 8. 60

19. b.

1 pars inst.

19. b.

4 P. Inst. c.  
Parl.

Hobart's re-  
ports fol. 152.

(Record) there mentioned, is onely  
memoriall of what was done and en-  
tered in a book : A plaintiff removed  
of the County-Court to the Court of  
the common-Pleas, hath these word  
in the Writ of remove; *Recordari fa-  
cias loquelas, &c.* and yet the coun-  
ty court is no court of Record : an-  
so for ancient Demesne in a Writ of  
false judgement, the words are *Reco-  
noscendi facias loquelas, &c.* and yet the  
court of ancient Demesne, is no court  
of Record ; and so of a court Baron  
the Law and custome of *England* mu-  
be preserved, or *England* will be  
destroyed, and have neither Law nor  
custome.

Let any man shew me, that the  
Court of Lords, or the House of  
Commons in any age hath made any  
man a Delinquent (*Rege dissidente*)  
the KING contradicting it under his  
Great Seale. *Michelet*, and others  
late were condemned by the prosecu-  
tion of the House of Commons in  
King James his time, did King James  
ever contradict it ? An I so in ancient  
times, where the House of Peers  
condemned the Lord *Latimer* in 50  
E. 3. The Kings pardon freed him  
which shewes clearly, that the King  
expresse or implied assent must of ne-

4. Pars Init.  
T. 1. Parlia.  
p. 23. 1. 11

City be had to make a Delinquent, the execution of the sentence is in the Kings name.

The Gentl. saith, *That the Parliament sits, or ought to sit by something other than the Kings Writ, &c.*

No Parliament did ever sit without the Kings Writ, nor could ever Parliament begin without the Kings presence in Person, or by a Guardian of England by Patent under the Kings Great Seale, the King being in remiss, or by Commission under the Great Seale to certaine Lords representing the Kings person, and it hath been thus in all Ages unto this Session of Parliament, wherein his M<sup>t</sup>th hath been pressed, and hath passed two Acts of Parliament, one for a bienniall Parliament, and another for a perpetuall, if the Houses please, satisfie their desires; how these two Acts agree one with another, and with the Statute in Edw. the thirds time, where Parliaments are ordained to be holden every yeare, and what miseries to the people of this Land length of Parliaments will procure by protections and priviledges to them and their meniall servants from all debts during their lives, if they please to continue it so long, and

4 p. inst.

p. 4 &amp; 6

4 E. 3. 14.

36. E. 3

c. 10

21 lac. the

A &amp; of Limi-

tation of

A &amp; tions,

c. 22.

how destructive to mens actions  
gainst them , by reason of the Stat  
of Limitations , which confines t  
actions to certain yeares ; and in  
other inconveniences of greater  
portance , is easie to understand.

How can any man affirme , that  
two Houses of Parliament do  
now by the Kings Writ , which rel  
to counseil and treatie with the K  
concerning the King , the defenc  
his Kingdom and of the Church  
England , these are three points wh  
it tends to , as appeares by the W  
They keep their King prisoner  
Holmby , and will not suffer him  
consult and treat with them . T  
have made a Vow and Covenant  
assist the Forces raised and contin  
by both Houses against the Forces  
sed by the King without their cons  
and to the same effect have dev  
the Oath which they call the *Nega  
Oath* : Is this to defend the K  
Kingdom ? or their kingdom ?

When by their solemne League  
Covenant they extirpate Bishop  
Deanes and Chapters root & bran  
Is this to defend the Church of E  
land ? ( that Church must necessa  
be meant , that was the Church  
England when the said Writ bore to

4 p. inst.  
p. 14  
Vow and  
Covenant,  
p. 11.

3 pars  
Cook Dean  
and Chap  
ter of Nor  
wich.

they were not summoned to defend a Church that was not in being, to destroy and defend the Church are very contrary things; the Church is not defended, when they take away and sell the Lands of the Church.

The Gentleman saith, The King car-  
ries controul over Courts of Justice, or  
prevent them from sitting, or acting, and  
therefore not the two Houses, &c. It is  
true, the King cannot controul or  
prevent his other Courts, for that they  
are his ordinary Courts of common  
Justice, to administer common right  
unto all men, according to the fixed  
Lawes. The Houses make no Court  
without the King, they are no Bodie  
corporate without the King, nor Par-  
liament without the King, they all  
make one corporate Bodie, one Court  
called the Parliament, whereof the  
King is the Head, and the Court is in  
the Lords House, where the King is  
present: and as a man is no man with-  
out a head, so the Houses severed from  
the King, as now they are, have no  
power at all, and they themselves by  
levying War against the King, and im-  
prisoning of him, have made the Sta-  
tute for not dissolving, adjourning, or  
proroguing this Parliament of no ef-  
fect, by the said Acts of their own:

they

14 H. 8. 3.  
36 H. 8. 2.  
Dier 60.  
4 p. init.  
p. 1.

they sit to no purpose without his assent to their Bills, they will not suffer him to consult with them, and treat and reason with them, whereby he may discerne what Bills are fit to pass and what not, which in all ages the Kings of this Land have enjoyed their undoubted Rights, and therefore they sit to no purpose by their own disobedience and fault.

29 H. 8. c. 34.

28 H. 8. c. 11.

Diff.

3. R. 3. 11.

For the ordinary Courts at Westminster, the Judges in all those Courts are Judges by the Kings patent or Writ otherwise they are no Judges: the Houses can make no Judges, they are no Judges at all who are made by them the whole and sole power of making Judges belongs to the King: the King cannot controule or prevent his own Judges from sitting and acting, but the Houses He may, for they are not the Kings Judges, but the judges of the Houses. In his other Courts, the King commits his power to his Judges by his patent, and they are sworne to do common right to all men, and the King is sworne not to let them from doing, the King cannot judge in those Courts, nor controule, but the King is both Judge and Controuler in the Court of Parliament: Quord Act for his assent or dissent doth give like

death to all Bills, Many Lawyers  
ave much to answer to God, this  
kingdom, and to posterity, for puz-  
ing the people of this Land with such  
ancies, as the Gentleman who wrote  
the Answer to my Paper, and others  
ave published in these Troubles,  
hich have been none of the least cau-  
ses of the raising and continuing of  
hem. And so I have done with the  
rst part of this Answer.

A D. 2.

For the *Non sequitur*, in the second  
ection of the Gentl. Answer, the  
ntecedent and the Consequent are  
is owne.

( *libellus* :

*Quem recitas mens est ( O Fidentine ! )*  
*Sed male dum recitas incipit esse tuus*

ly words are, that the King is not  
rually in the two Houses at West-  
minster, to enable them to grant par-  
sons, for that whole and sole power  
y the Law belongs to the King : My  
aper hath no such thing, as that the  
ings power cannot be derived to o- 3, H. 8  
thers, or the virtue of his power : For c. 24  
s power and the virtue of his power,  
in all Patents to his Judges, in  
arters to Corporations, in Com-  
mission

missions of all sorts, and in the Parliament assembled by force of his Writ of Summons, so long as they obey him: but when they renounce that power, and claim it not from the King, and declare to the Kingdom that he is not in condition to govern and imprison him, and usurp to themselves all Royal Authority, as the two Houses now do, no reasonable man can affirme that they Act by the power of their Prisoner, who has no power to give them, that by force of Armes take all power unto themselves.

The Gentl. faith, The King grant  
Comissions dayly of Oyre and Ter  
miner, whiche he cannot frustrate nor  
elude. The King may revoke and di  
chachte the Commission by his Writ  
as he may remove all Judges, and  
place other men in their room; and  
any Kings death determines all the  
Judges Patents at Westminster Hall  
Commission of Oyre and Terminer, &c  
And so he might dissolve both Hous  
in all times, by his Writ under the  
Great Seal, until that in this Parli  
ment, by his own concession, the  
King of his goodnesse had seelde  
himselfe; whiche goodnesse had be  
full all required.

4 P. 4.39.  
5 E. 4.4.  
1 Eliz. Dier.  
165. 42  
1 Mar.  
Brooks case  
447.

The Gentl. affirms, *That the power*  
*the Parliament hath is concurrent from*  
*the King and Kingdom*; which, he  
 conceives is proved by the grant <sup>4 pars infra</sup>  
 of Subsidies to the King by the Parlia- pag.  
 ment. The mistaking of this word  
*Parliament* hath been mischievous  
 in these times to this Land, and it is  
 effectually mistaken, which makes the  
 in the greater, for the two Houses are  
 not the Parliament, as before is de-  
 lared, and at this time so to inculcate  
 it; when all men know, that of the  
 20. Peers of this Kingdome, who  
 were temporall Peers before the Trou-  
 bles; there are now not above 30. in  
 the Lords House, and in the House of  
 Commons about 200. of the princi-  
 pall Gentlemen of the Kingdom left  
 the House and adhered to his Majesty,  
 who is imprisoned by them, shewes no  
 such candor as is to be desired.

It is true, that no Tallage can be  
 laid upon the people of this Land but  
 by their consent in Parliament, as ap-  
 peareth by the Lawes mentioned in  
 the Margent; but you shall finde in  
 M. Seldens learned Book, called *Mare-  
 clausum*, a number of presidents in  
 Henry the thirds time for Ship-mony  
 justly condemned this Parliament, to  
 the which his Majesty assented; and in  
 truth

25 E. I. C. 22  
firmissim  
charatum  
a. 6  
34 E. I. C. 1  
de Tallagio  
non conce-  
dendo.

truth that Ship-money was conde-  
ned before by the said two Statutes  
25 E. I. & 34. E. I. de Tallagio non co-  
cedendo. Dangelet, Englishly, and man-  
grievous Burthens were laid upon the  
people, and born, untill that memor-  
able Princes time. But I am of opinion  
that the Common Law of the Land  
did alwaies restraine Kings from a  
Subsidies and Tallages, but by conse-  
in Parliament ; which doth appeare by  
*Magna Charta* the last chapter, where  
the Prelates, Lords, and Communa-  
ty gave the King the fifteenth part of  
their moveables. In truth it is in  
manner of consequence, because the  
King cannot take what he pleaseth of  
the Subjects good, that therefore they  
have a concurrent power in Parlia-  
ment : there have been many Parlia-  
ments and no Subsidies granted, Par-  
liaments may be without Subsidies  
but Subsidies cannot be without Par-  
liaments : of ancient times Parlia-  
ments rarely granted any, unlesse  
were in the time of forreigne Warres  
and in my time, Queene Elizab. refi-  
sed a Subsidie granted in Parliamen-  
t and in the Parliament of 1 Jas. nor  
were any granted. The Gentl. shoul-  
make a conscience of blinding  
the people with such untrue co-  
lours

ers to the ruine of the King and  
ople.

AD. 3.

The Gentl. affirmes, That the sending propositions to the King, and de-  
ing his concurrence, is scarce worth an-  
swer; for Subjects may humbly petiti-  
for that which is their strict right  
property, &c. The propositions sent  
Newcastle, are in print; wherein  
the two Houses are so farre from  
humbly petitioning, that they stile  
themselves his Majesties Sub-  
jects, as appeares by the proposi-  
tions.

That they have a strict right or pro-  
perty to any one of these propositions  
a strange allertion, every one of them  
eing against the Lawes now in force.  
Have the two Houses a strict right and  
property to lay upon the people what  
axes they shall judge meet? To par-  
don all Treasons, &c. that is one of  
their propositions. Have they a strict  
right and property to pardon them-  
selves? and so for all the rest of their  
propositions.

These propositions have been Voted  
by both Houses, the King's assent (they  
eing drawn into Bills) makes them  
Acts of Parliament; Hath the King

**G** no

12 H. 7. no right to assent or dis-assent? W  
20. 1 Iac. the sending but a Complement? A  
c. 1. 1. Car. our Law-books and Statutes spe  
2. 7. otherwise. This Gent. and othe  
must give an account one time  
other for such delusions put upon the  
people.

AD. 4.

The Gent. saith, They affirme now  
that the Kings power is separated from  
his person, so as the two Spencers  
affirmed, &c. His Majesties person  
now at Holby under their guard  
have they not severed his power from  
him, when by no power they have left  
him, he can have two of his Chaplains  
who have not taken their Covenant  
attend him for the exercise of his con-  
science?

13. Ed. 2. For the three conclusions of the  
Exilium Hugonis Spencers, do not the two Houses  
Calvins case 1 E.c. every of them? They say, his Maj-  
esty hath broken his Trust, touch-  
2. 7. pars the Government of his people: They  
reports, II. have raised Armies to take him, they  
have taken him and imprisoned him  
they governe themselves: they make  
Lawes, impose Taxes, make Iudges  
Sheriffes, and take upon them omni-  
in signia summae potestatis: Is not this  
remove the King for misdemeanour

to reforme per asperte, to govern in aid  
of him; the three conclusions of the  
benevers? Doe they think the good  
eople of Eng'and are become stupid,  
and will not at length see these things?

The Gentleman saith, They doe not Plowd, 4.  
separate his power from his Person, but Eliz. 213.  
slinguish it, &c. His power is in his the Kings  
gall Writs, Courts, and Officers: Power &  
hen they counterfeit the Great Seal, his person  
and seale Writs with the same, make are indivi-  
udges themselves, Courts and Offi- sible.  
ers by their own Ordinances against  
is consent, declared under his true  
reat Seal of England (not by word  
f mouth, lette s, or ministers only,) their  
eir Seal is obeyed, their own Writs,  
eir own Judges, their own Courts,  
eir own Officers, and not the Kings:  
he time will come when such strange  
tions & discourses will be lamented.

## A D. 5.

The Gentleman goes on, wee take  
it from the King all power of pardo-  
ing Delinquents, wee only say it is not  
proper to him quarto modo, &c. What  
be you meane by quarto modo? I am  
re, *Omnis Rex Angliae, solus Rex &*  
*super Rex*, can doe it, and none else;  
ad the books of the Law to this  
xpose, collected by that reverend

Stanford. and learned Judge Stanford, from al  
 p'leas 99. Antiquity to his time, who died in the  
 27. H. 8. c. last year of King Philip and Queen  
 24. Dier. Maries Reign, you shall find this  
 163. truth undeniable; and this power wa  
 never questioned in any Age in any  
 Book by any untill this time, that eve  
 ry thing is put to the question. You  
 Gentlemen, who profess the Law, and  
 maintain the party against the King  
 returne at length, and bring not so  
 much scandall upon the Law ( which  
 preserves all ) by publishing such in  
 credible things.

We hold only what Law holds: the  
 Bract.lib. 3 Kings Prerogative and the Subjects Li  
 cap. 14. fol. berty are determined, & bounded, an  
 132. 1. pars admeasured by a written Law wh  
 Instit. pag. they are; we doe not hold the King  
 344. Plow have any more power, neither doth he  
 3. Eliz. Majesty claim any other but what the  
 236. 237. Law gives him; the two Houses by  
 the Law of this Land, have no color  
 of power, either to make Delinquent  
 or pardon Delinquents, the King con  
 tradicting; and the Army under Sir  
 Thomas Fairfax ( howbeit but Sculps  
 ers) doe now understand that to  
 Law, and doe now evidently see, and  
 assuredly know, that it is not an Or  
 nance of the two Houses, but an act  
 Parliament, made by the King, Lor

and Commons that will secure them; and let this Army remember their executed fellow-Souldier, and the Law was always so taken by all men untill these troubles, that have begot Monsters of opinions.

## A D. 6.

This Gentleman sayes, *The Parli-  
ment bath declared the King to be in no  
condition to governe, &c.*

There is no end of your distinctions; I and you professe the Law; shew me Law for your distinctions, or letter, syllable, or line, in any Age in the books of the Law, that the King may in one time be in no condition to govern and yet have the habit of governing, and another time he may (viz.) when the two Houses will suffer him; the Law saith thus, *Vbi lex non distinguit, non est distinguendum.*

He sayes, *The King is not barred from returning to His Parliament, (as hee calls the two Houses) hee knows the contrary, the whole City knows the contrary, Nos juris consuli sumus sacerdotes, (as Justinian the Emperour hath it, in the first book of his Institutions) and therefore knowledge and truth should come from our lips: Worthy and ingenuous men*

G 3. will

will remember, and reflect upon the  
passage of that good and wise man  
Seneca, *Non quia itur, sed quia eundum*  
follow not the wayes of the Lawye  
of the House of Commons: God for  
give them, I am sure the King will,  
they be wise and seek it in time.

A D. 7.

J. Eliz. ch.  
J. Caw-  
drey's case  
c. pars,  
fol. 1.

The Gent. sayes, we swear that the  
King is our supreme Governour over  
persons and in all causes, &c. Why hat  
he left out the word (*only?*) for the  
Oath the Members now take, is that  
King Charles is now the only and Su-  
preme Governour in all causes, over  
all persons, and yet they keep the  
only Suprem Governour now in pri-  
son, and act now in Parliament by virtue  
of their Prisone's Writ, and by a con-  
current power in this Parliament, and  
by their own strict right and property  
(as the Gentleman affirms in his  
Answer.) These things agree well  
with their Oath, that the King is the  
only Supreme Governour in all  
causes over all persons. This Oath  
taken now in the Parliament time by  
all the Members of the House of  
Commons, and is required by the  
Law to be taken in all Parliament  
otherwise they have no power, no  
c.

This Oath  
is allowed  
by the  
common-  
Law of  
the Land.

our to meddle with the publick Affairs.

This Oath being taken in Parliament, that the King is the only and Supreme Governour in all causes, then it followes in Parliament causes, over all persons, then over the two Houses. Let them keep this Oath, and we shall bee free of peace in the Land, and good awyers ought to desire peace both for the publick good, and their private, and not dishonour that Noble profession, as many doe in this miserable me.

The Gent. sayes, wee do not swear that the King is above all Law nor above the safety of his people : neither do we swear, but his Majesty and we will swear to the contrary, and have done and have made good, and will by Gods grace make good our Oath to the world, that the KING is not above the Law, nor above the safety of his people : the Law and the safety of his people are his safety, his Honour and his Strength.

A.D. 8.

The Gent. concludes, The Acts of Parliament are not formally binding nor compleat without the Kings assent, yet the Houses have a virtuall power with-

out the Kings particular assent, to things in order to publique justice, safety ( viz. ) In setting up the Excise in raising and maintaining of Armes in Taxing the people at pleasure with Fifth and Twentieth part, Fifty Subsidies, Sequestrations, Loans, Compositions, imprisoning the King, abolishing the Common prayer Book, selling the Church Lands, &c. all that are in order to the publick Justice and Safety.

M. H. P. you are of my profession; I beseech you, for the good of your Countrey, for the honour of Science, perswade your self and others as much as in you lies, to believe and follow the monition and councel that memorable, reverend, and profoundly Learned in the Lawes

3 pars inft. Customs of the Land, the Lawes of England, &c. &c. pag. 36. COOKE, who writes as becomes a great and a learned Judge of Law ( a person much magnified by the two Houses ) in these words.

Peruse over all Books, Records and Histories, and you shall finde a Principle in Law, Rule in Reason, and a Truth in Experience, that Treason shal ever produce fatall and

all destruction to the offender,  
and never attaines to the desi-  
red end (two incidents insepara-  
bly thereunto) & therefore let all  
men abandon it as the poyso-  
ous bait of the devill and follow  
the Precept in Holy Scripture:  
SERVE GOD, HONOUR  
THE KING, AND  
HAVE NO COMPANY  
WITH THE SEDI-  
TIOUS.

### Conclusion.]

I say againe, that without an Act of  
blivion, a gracious generall pardon from  
his Majesties, the Arrears of the Soul-  
ters paid, a favourable regard had to  
Under Consciences, there will be neither  
Truth nor Peace in this Land, nor any  
man secure of any thing he hath.

By me David Jenkings Prisoner  
in the Tower.



A.

## DISCOURSE

## TOUCHING

*The Inconveniencies of a Long Parliament,  
continued*

## PARLIAMENT.

**A** Perpetuall Parliament is pugnant to the Act made by this Parliament for a Trial Parliament; for how can every three years a Parliament begin, if this be perpetual, which may be so if the two Houses please.

2. An adjournment of the Parliament makes no Session, *4 pars. in tut. fol. 27.* Howbeit, before the adjournment, the King gives his Royall assent to some Bills. *C. Ibid.*

3. There is no Session till a Prorogation

ation or dissolution of the Parli-  
ment.

4. This Parliament, as appears by  
the Act of not dissolving thereof, set  
downe in the printed Statutes of this  
Parliament, fol. 138. cannot be pro-  
pounded or dissolved, but by Act of Par-  
liament. There hath been as yet no  
Act of Parliament in that behalfe: and  
therefore all the Acts of this  
Parliament, are Acts of one Ses-  
sion.

5. All Acts of one Session relate  
to the first day of the Parliament;  
and all the Acts of such a Parliament  
are Acts of one day: so the Act for  
the Trienniall and the Act for this  
Perpetuall, are two Acts of one day  
by the Law.

6. 4 Ed 3. cap. & 36. Ed. 3. cap 10.  
A Parliament is to be holden once  
every yeare, and more often if need  
shall bee; these Acts are confirmed by  
the Act for the Trienniall Parlia-  
ment. How doth a perpetuall Parli-  
ament agree with a Parliament once  
every yeare, or with the intention  
of those Lawes? How doth a Parlia-  
ment every three years agree with a  
Parliament for ever, which may be if  
the two Houses please?

7. The result is this; at one day in  
the year, in the same place, in the same  
Lan-

Law this Parliament two Acts have passed (for howbeit the one was in 16<sup>th</sup> Car. and the other in 17<sup>th</sup> Car. yet both in Law are Acts of one day) the one saith there shall be a Triennial Parliament after the end of the sitting of this Parliament: The other this Parliament shal sit for ever if they please. The one will have a Parliament with an end, the other a Parliament without an end.

11. pars. When an Act of Parliament is a Doct. Bon. against common Right or Reason, & hams case repugnant, or impossible to be performed, the Common Law shall control it, and adjudg this Act to be void; the El. cassavit. are the words of the Law.

32. An Act of Parliament, that a man  
27. H. G. shall be Iudg in his own Cause, is a void  
Anuity 41. Act. Hobart Fol. 110.

3. Eliz. Di- Begin with Common Right. It is  
c. 113. against Common Right, that indebted  
men should not pay their debts; That if any Member of the House of Commons doe any Subject wrong by disseising him of his land, or dispossessing him of his goods, or blasting of his fame, or doing violence to his person, that such persons during their lives should not be questioned by a privilege of Parliament, and that extended also to many other beside them.

emselves; common right doth abhor  
these Enormities, which a perpetuall  
Parliament doth beget, besides the ut-  
most destruction of all mens actions, real,  
ersonall, or mixt, who have to do 21. Iac. c.  
th Parliament-men, by the Statute of 16.  
imitation, which confines Suites to  
certain years.

For Common Reason. Parliaments  
are ordained for remedies to redresse  
publique grievances; it is against reason  
they should make publique and in-  
ufferable Grievances. The Law of  
the Land allowes no protection for a  
y man employed in the service of the  
Kingdom, but for a yeare to be free  
from Suites, and in many Suites none  
at all, howbeit he be in such service; 39. H. 6.  
but a Parliament perpetuall may 39.  
rove a protection, not for a yeare,  
but for ever, which is against all  
manner of reason.

For impossibility. The death of his  
Majesty (whose life God prolong)  
dissolves it necessarily; for the Writ of  
Summons is, *Carolus Rex in hoc in-  
dividuo*, and *Carolus Rex* is in this  
particular, *habiturus colloquium &  
tractatum cum prælatis & proceribus*,  
&c. King *Charles* being to have con-  
ference and Treaty with his prelates  
and peers; *Carolus Rex* cannot have  
*colloquium*

2 H. 5. *colloquium et tractatum*, Conference  
Book title and Treaty when he is deceased, and  
Parl. 3. therefore it is as impossible for an  
pars. Parliament to continue as long as  
they please, as for a Parliament to  
make a dead man alive.

For repugnancy. That which  
but for a time cannot be affirmed to  
have continuance for ever, it is re-  
pugnant.

The end of the *Act. 17 Caroli Regi*  
which is to continue at pleasure, is in  
the said act expressed to be to raise cred-  
it for money for these three purpose.  
First, for relief of his Majesties Ar-  
my and People in the North. Sec-  
ondly, for preventing the imminent  
danger of the Kingdom. Thirdly, for  
supply of other his Majesties presen-  
and urgent occasions. These ends  
are ended, the relief of that Army  
the imminent danger supposed was si-  
yeares agoe, the supp'y of his Majest  
hath been a supply against him; tak-  
away the end, the means thereto are  
to no purpose; take away the cause  
the effect ceaseth; and therefore the  
three ends of this Act being determi-  
ned, it agreeth with Law and Reason  
the Act shculd end, the Law rejects  
things unprofitable and uselesse.

A perpetuall Parliament. ( bcsd  
th

Sir Antho-  
ny Maines  
case, 5.  
pars.

1 H. 4. 6.  
Littl. cap.  
Villeus.

at it incites men to selfe-ends, destructive of the publick, of which the whole Kingdom hath had sufficient experience) will be a constant charge to the Kingdom; for that every County and Borough, who send Members to the Parliament, are by the Law to pay Wages to their Parliament-men, which to many Countries will amount above some Subsidies yearly; there are many poore Borough-Towns in each County of this Kingdom, who being to maintaine two Burgesses in Parliament, will be quickly beggered, if the Parliament have no end. For all which reasons it is clear, that such long continuance of Parliaments, will instead of a remedy (which is and ought to be the proper and true end of Parliament) become an insufferable Grievance and Oppression to all the People of the Land.

The Writ of Summons this Parliament is the Basis and Foundation of the Parliament. If the foundation be destroyed, the Parliament fails. The Assembly of Parliament is for three purposes. *Rex est habiturus colloquium & tractatum cum Pratis, magnatibus & proceribus super arduis negotiis, concernentibus, 1. nos, 2. Defensionem regni nostrri, 3. defensionem Ecclesie Anglicanae.*

ne. This Parliament hath overthrow this foundation in all three parts. 1. Nos. The King they have chased him away, and imprisoned him; they have voted no Prelates, and that number of other Lords, about fourty in the City must not come to the House, and about fourty more are out of Town; the *colloquium & tractatus* are made void thereby. For the King cannot consult and treat there with men removed from thence. 2. *Defensionem regni nostri*, that is gone; they have made it their Kingdom, not His for they have usurped all his Sovereignty. 3. *Defensionem Ecclesiae Anglicanae*, that is gone; that *Ecclesia Anglicana* must be understood necessarily that Church that at the test of the Writ was *Ecclesia Anglicana*, they have destroyed that too. So now these men would be called a Parliament, having abated, quashed and made nothing of the Writ whereby they were summoned and assembled. If the Writ be made void, All the Processe is void also; that House must needs fall where the Foundation is overthrown. *Sublato fundamento opus cadit*, the foundation being taken away, the work falls, is both a Maxime in Law and reason.

For some years past, there is no crime

ime from treason to trespass, but they  
e guilty of; all Treasons, Felonies,  
obberies, Trespasses are *contra pa-  
xem, coronam & dignitatem Regis*,  
gainst the Peace Crown and Dignity  
of the King; as appeares by all In-  
dictments in all Ages. *Pax Regis*, the  
Kings peace, *Corona Regis*, the Kings  
crown, *Dignitas Regis*, the Kings dig-  
nity, are all trod under foot, and made  
nothing; *Pax Regis*, the peace of the  
King is become a Warre against the  
King, his Dignity put into prison, and  
the Crown put upon their own heads.

All the Judges of England have re-  
solved, that Noble-men committing  
Treason have forfeited their office and  
Dignity; *their office is to councell the King in time of Peace, to defend him in case of Warre, and therefore those men against the duty and end of their Dignity taking not only councell, but Armes also to destroy him, and being thereto constraint by due course of Law, by a tacit condition annexed to the estate of their dignity, have forfeited the same; they are the words of the Law, and therefore they have made themselves incapable to be Members of the upper House,* Nevils  
part  
34. 2. Iac.

*The Oppressions of the People.*

Briberies, Extortions, Monopolie  
ought to be inquired after by the  
House of Commons, and complained  
of to the King and Lords. What have  
they done?

The House of Commons cannot by  
the Law commit any man to prison  
who is not of the said House, for  
Treason, Murder, or Felony, or an  
thing but for the disturbance of the  
publique peace, by the priviledge of  
the whole Body.

They have no power by the Writ  
which the King issueth to elect and  
returne Members of that House, so to  
do. For the Writ for them is only *ad  
saciendum & consentiendum*, to those  
things, whereof his Majesty shall con-  
sult and treat with his Prelates and  
Nobles, & *de communi consilio Regni*  
shall be there ordained, as appears by  
the Writ. Here is no separate power  
given over the Kings people to them  
but only *ad faciendum & consentien-  
dam*; and in all times this hath bee  
expounded and restrained to that  
which concerned their ovn Members  
in relation to the publique Services  
as they are Members of the corporate  
Body

4 pars inst.  
23, 24, 25.

dy of the Parliament, whereof the  
King is the Head.

But that the House of Commons  
have committed any man for Treason,  
Murder or Felony, or for any offence  
that had no relation to a Member of  
the House of Commons, as it is a-  
gainst Law and reason, so no instance  
can be given till this Parliament.

All Questions and Tryals, where  
these are examined, the Examina-  
tion is upon Oath by the Law, by  
our Books, Statutes, every dayes  
Practice. Examination without an  
Oath is but a loose discourse; there-  
fore the House of Commons not  
having power to give Oath have no  
power to examine any man.

No man shall be imprisoned by the  
King or his Councell, unlesse it be by  
indictment, presentment of his good  
and lawfull Neighbours where such of Right,  
needs be done, in due manner, or by  
3. Car.

Processse made by Writ originall at the  
Common Law; this Statute rebeares  
Magna Charta, p. 29. and expounds Lex  
terre, the Law of the Land there men-  
tioned: this Law bindes all men, and  
the House of Common C (for they say  
they are of the Kings Councell) in all  
points, but only against the disturbers  
of the service of the Parliament; and  
therefore

15. H. 6. 43.

22. E. 4. 22.

5. H. 4. c. 8.

3. H. 6. 46.

therefore the Imprisonment of severall persons who are not their Member for no disturbance to their Member is utterly against the Law of the Land and the Franchise of the Freeman of this Realm.

*cui non licet quod minus, non*  
*quod Majus;* he who may not do what is lesse, may not do what is greater they cannot commit a man for murder or Felony, much lesse for Treason.

No Court can fine and imprison but a Court of Record; the House of Commons is no Court of Record; the House of the Lords where the King in person, his Nobles and his Judges and Councell at Law, the Masters of the Chancery assisting, is a Court of Record, and that is the Court of Parliament, where the *Colloquium & Status* is; The House of Commons may present Grievances, grant or grant Aides, consent or not consent to new Laws; but for fining or imprisoning any but as aforesaid, is but of late date, and no satiscent usage: They have no journall Book, but sithence

21 E.4. fol.  
46.

*Edw. 6. time 6. Hen. 8, cap cap. 15. d.* not prove the House of Commons be a Court of Record, it mentioned only to be entred on Records in the Book of the Clerk of the Parliament.

Commons  
y members depart into the Coun- Commons  
There is no Journal but sithence in Parlia-  
time, and that is a Remem- ment ne  
ice or memoriall, as 12. H. 4. 23. sert Iud-  
The whole Parliament is one cor- ges.  
ate Body, consisting of the Head  
three Estates: The Court is only  
were the *Consilium & tractatus*  
where the consult and treaty is with  
King, which is in the House of  
Lords only.

The House of Commons claim not  
examine upon Oath any Man; no  
Court can be without a power to give  
Oath; Courts Baron, Court of Pi-  
wders, County Court, may and doe  
ve Oath; no Court can be without  
power to try, no triall can be without  
Oath; and therefore the house of  
Commons not claiming power to give  
Oath, can bring no matter to tryal,  
and consequently can be no Court.

The behaviour of the Commons at  
Conference with the Lords; the  
Commons are alwayes uncovered, and  
standing, when the Lords sit with their  
bars on, which shewes they are not  
Colleagues in judgment; for fellow-  
judges owe no such reverence to their  
Companions.

When was ever Fine imposed by the  
House of Commons estreated in the  
Exche- 11 H. 4. c.  
II.

Exchequer? The ejecting of a Member, who hath sitten, is against the Law; for they cannot remove a man out of the House unduly returned, much less a man returned duly.

2 H. 4. c. 6. By these Lawes it appeares, that  
 1 H. 5. c. 1. any undue return be made, the per-  
 8 H. 6. c. 7. son returned is to continue a Mem-  
 23 H. 6. ber, the Sheriffs punishment is 200  
 c. 15. one to the King, another to the party  
 that is duly elected, Imprisonment  
 for a year without Bail or Mainprise  
 and that person who is unduly return-  
 ed, shall serve at his own charge, and  
 have no benefit at the end of the Par-  
 liament by the Writ *De solutione feoda-  
 rum Militum, Civium, & burgenium*  
*Parliament.* And the tryall of the  
 falsity of the return, is to be before the  
 Justices of the Assizes in the proper  
 County, or by action of Debt in any  
 Court of Record. This condemns  
 3 Ed. 4. 20. the Committee for undue Elections  
 5 Ed. 4. 41. which hath been practised but of late  
 times; for besides these Lawes, it is  
 against a maxime in the Common-  
 Law; an Averment is not receivable  
 against the returne of the Sheriff, for  
 his Return is upon Oath, which  
 Oath is to bee credited in that Suit  
 wherein the Return is made.

The said Statutes condemn and  
 make

make those Members no Members, which were not resident in the County and Boroughs, for which they were elected, at the time of the issue of the Writ of the summons of the Parliament, and any abusive practice of the times to the contrary is against the Law, and ought not to be allowed.

*Assault upon Parliament-men.*

If a Parliament-man, or his Men-  
servant be assaulted, beaten, or  
murdred, in the Parliament time,  
clamation shall be made where the  
act is done, that the Offender shall  
ender himselfe to the Kings Beach,  
within a quarter of a year after pro-  
clamation made, & the offence there  
be triyed; for Default of appearance  
the Offender is declared, attainted of  
a Misdeed, and it is accorded that  
hereafter it be done likewise in the  
case.

Serving of process upon a Lord of Bogo de  
the Parliament punished in the Clare  
Lord's House.

Serving of process upon Thornsby inst. fol. 24.  
quired of in the Chancery, and there lo. Thorns-  
byes case.  
Offenders were convicted.

The premises prove, that breaches Clerk of  
privilidge of Parliament may be the Parl.  
punished ibid, 10. E. 3

5 H. 4. c. 6.  
II. H. 6. c.  
II.

E. 3. 4. pars

published elsewhere then in Parliament

Vpon all this Discourse, it is easie to decerne what fruits may be expectēd from this Parliament, continuing as long as the two Houses please, and that there is no safty for this Common-Wealth, but by the observation of their antient Franchises, customes and Lawes.

### Conclusion.

I say againe, that without an Aēl of Oblivion, a gratiouse generall pardon from His Majesty, the Arreares of the Souldiers paid, a favourable regard had to tender consciences, there will be neither Truth nor Peace in this Earth nor any man secure of any thing he hath.

AN







